

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PATRICK KALIX,)	
)	
Petitioner,)	
)	
v.)	C.A. No. N18M-08-094
)	
STATE OF DELAWARE,)	
)	
Respondent.)	

ORDER

Petitioner Patrick Kalix filed a Petition for Return of Property on August 14, 2018. The Petition permitted Petitioner Kalix to elect a jury trial if he wanted to do so. Petitioner Kalix did not elect a jury trial.

On November 15, 2018, a Return of Property status hearing was held and the matter continued to allow the parties to exchange further documentation.

On December 20, 2018, another Return of Property status hearing was held and the matter was set for trial.

The trial on this matter was scheduled on September 5, 2019. At the time of trial, Petitioner Kalix objected to proceeding with the bench trial on the grounds that he had elected a trial by jury.

The Court continued the trial on September 5, 2019, in order to review the

record to determine if Petitioner Kalix had properly demanded a trial by jury or if it had been waived.

Having reviewed the record, it reflects that Petitioner Kalix never timely requested a jury trial. He did not request a jury trial in the caption of the Petition, during either of the two Return of Property hearings held on this case, or in writing at any time. No timely demand for a jury trial was made in accordance with Superior Court Civil Rule 38.

In order to preserve the right to a jury trial, the Petitioner must have demanded it on the face of a pleading at the time the action was commenced.¹ Under Rule 38, the failure of the Petitioner to properly demand a jury trial constitutes a waiver of his right to a trial by jury. This Court finds that Petitioner Kalix waived his right to a jury trial by not demanding it pursuant to Rule 38.

Superior Court Civil Rule 39 provides, however, that such a waiver is not always irreversible. Specifically, Superior Court Civil Rule 39(b) provides that notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion, upon motion, may order a trial by a jury of any or all issues.²

¹ *Commonwealth Construction Co. v. Cornerstone Fellowship Baptist Church, Inc.*, 2005 WL 3098924, *2 (Del.Super); Super.Ct.Civ.R. 38(e).

² Super.Ct.Civ.R. 39(b).

In exercising its broad discretion to decide whether or not to grant relief from the waiver, the Court should be guided by certain factors including: 1) the timeliness of the request; 2) whether the failure to make the jury trial demand was due to mistake or excusable neglect; 3) whether the action is particularly suited for a jury trial or is better suited for a bench trial; and 4) whether allowing a jury trial would prejudice the rights of the adverse party, substantially delay the trial, or would interfere with the orderly disposition of the court.³

Each factor should be considered and no one factor should carry the day. The particular facts and circumstances of the subject case should be considered as a whole when making the determination as to whether or not to grant relief from the waiver.⁴

Applying these factors to the subject case, first, Petitioner's request for a jury trial was not timely made. It was made on the day of the bench trial, September 5, 2019, more than one year after Petitioner filed his Petition for Return of Property. All of the State's witnesses were present in the courtroom and the State was ready to proceed with the bench trial. The request for a trial by jury was not made within a reasonable time after the expiration of the time allowed by statute or rule and was

³ *Commonwealth Construction Co. v. Cornerstone Fellowship Baptist Church, Inc.*, 2005 WL 3098924, *2-3 (Del.Super).

⁴ *Id.*

not made at a proper stage in the proceeding.

Second, although Petitioner now claims that he always wanted a jury trial and that he had made that request known to the Court, the record does not support his representation. Petitioner did not request a jury trial on the caption of the Petition, at either of his two status hearings, or in writing at any other time. The record reflects that Petitioner never requested a jury trial in writing at any time during the pendency of this matter.

Third, this Court finds that the issue involved in this case, whether the Petitioner's property was properly seized pursuant to the Delaware Forfeiture of Drug Profits Act of 1990⁵, is, at the very least equally suited, if not better suited to be heard by the Court without a jury.

Fourth, the record is inadequate to factor into the analysis the extent of any prejudice to the State, if any, by converting this case at this late date to a jury trial. The Court should also consider the potential interference with the orderly disposition of the business of the court and its docket. To this end, it is, of course, recognized that it will take longer and involve more pre-trial pleadings and preparations to ready this case for a jury trial, and that trials by jury usually take longer to complete than bench trials. This matter is trial ready now for a bench trial. Any shortening of the

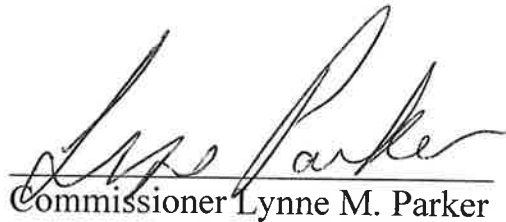
⁵ 16 Del. C. § 4784, *et. seq.*

time required to try this case, and the curtailing of additional pre-trial submissions and preparations, will assist in the more orderly disposition of the business of the court and its docket.

On balance, under the facts and circumstances of this case, this Court will not exercise its discretion to allow a jury trial in this case. The request for a jury trial is DENIED.

IT IS SO ORDERED.

Dated: February 18, 2020



Commissioner Lynne M. Parker

cc: Original to Prothonotary
Mr. Patrick Kalix
Danielle J. Brennan, Deputy Attorney General